

109TH CONGRESS  
2D SESSION

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To amend the Defense Production Act of 1950, to strengthen Government review and oversight of foreign investment in the United States, to provide for enhanced Congressional oversight with respect thereto, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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introduced the following bill; which was read twice  
and referred to the Committee on 

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**A BILL**

To amend the Defense Production Act of 1950, to strengthen Government review and oversight of foreign investment in the United States, to provide for enhanced Congressional oversight with respect thereto, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Foreign Investment  
5 and National Security Act of 2006”.

1 **SEC. 2. AMENDMENTS TO THE DEFENSE PRODUCTION ACT**  
2 **OF 1950.**

3 Section 721 of the Defense Production Act of 1950  
4 (50 U.S.C. App. 2170) is amended to read as follows:

5 **“SEC. 721. REVIEW AND INVESTIGATION OF MERGERS, AC-**  
6 **QUISITIONS, AND TAKEOVERS BY FOREIGN**  
7 **PERSONS AND GOVERNMENTS.**

8 **“(a) REVIEW OF TRANSACTIONS INVOLVING FOR-**  
9 **EIGN PERSONS AND GOVERNMENTS.—**

10 **“(1) REVIEWS REQUIRED.—**

11 **“(A) IN GENERAL.—**CFIUS shall review  
12 any merger, acquisition, or takeover proposed  
13 or pending on or after the date of enactment of  
14 this section by, with, or on behalf of a foreign  
15 person or foreign government which could result  
16 in foreign control of a person engaged in inter-  
17 state commerce in the United States, for which  
18 a review is requested, in the manner prescribed  
19 by regulations promulgated under this section.

20 **“(B) PURPOSES.—**The purpose of such re-  
21 view shall be to determine the effect on national  
22 security of such merger, acquisition, or take-  
23 over, whether an investigation of such trans-  
24 action is required under subsection (b), or both.

25 **“(2) TIMING OF REVIEWS.—**

1           “(A) IN GENERAL.—A review of a pro-  
2           posed or pending merger, acquisition, or take-  
3           over described in paragraph (1) shall be com-  
4           pleted not later than 30 days after the date of  
5           receipt by CFIUS of written notification of the  
6           proposed or pending merger, acquisition, or  
7           takeover, as prescribed by regulations promul-  
8           gated under this section.

9           “(B) EXTENSIONS UPON REQUEST.—Upon  
10          written request by the Secretary, Deputy Sec-  
11          retary, or Under Secretary of one or more of  
12          the agencies that make up CFIUS (including  
13          any agency described in subsection (c)(4)(I))  
14          for additional time to review a case, the 30-day  
15          period described in subparagraph (A) shall be  
16          extended by not longer than an additional 30  
17          days, if the Secretary, Deputy Secretary, or  
18          Under Secretary concludes that there is credible  
19          evidence to believe that if permitted to proceed  
20          with the transaction, the foreign acquiring enti-  
21          ty may take action that threatens to impair the  
22          national security.

23          “(b) INVESTIGATIONS OF CERTAIN TRANS-  
24          ACTIONS.—

1           “(1) IN GENERAL.—CFIUS shall undertake an  
2           investigation to determine the effects on national se-  
3           curity of any merger, acquisition, or takeover de-  
4           scribed in subsection (a)(1) proposed or pending on  
5           or after the date of enactment of this section—

6                   “(A) which would—

7                           “(i) result in control of any person en-  
8                           gaged in interstate commerce in the United  
9                           States by a foreign government, or a per-  
10                          son acting by, with, or on behalf of a for-  
11                          eign government; or

12                          “(ii) result in control of any critical  
13                          infrastructure of or within the United  
14                          States by, with, or on behalf of any foreign  
15                          person, if CFIUS determines that any pos-  
16                          sible impairment to national security has  
17                          not been mitigated by additional assur-  
18                          ances, as described in subsection (i), dur-  
19                          ing the review period under subsection (a);  
20                          and

21                          “(B) if the review by CFIUS under sub-  
22                          section (a) produces sufficient information to  
23                          indicate the possibility of an impairment to na-  
24                          tional security, after consideration of the fac-  
25                          tors listed in subsection (g).

1           “(2) TIMING OF INVESTIGATIONS.—An inves-  
2           tigation required to be undertaken under this sub-  
3           section—

4                   “(A) shall commence at such time as  
5           CFIUS determines under subsection (a) that  
6           such investigation is required, as prescribed by  
7           regulations promulgated pursuant to this sec-  
8           tion; and

9                   “(B) shall be completed not later than 45  
10          days after the date of its commencement.

11          “(3) RESUBMITTED FILINGS.—An investigation  
12          of a merger, acquisition, or takeover under this sub-  
13          section which is interrupted because the notification  
14          or filing is withdrawn by the applicant, and which is  
15          subsequently resubmitted, shall require up to a 45-  
16          day investigation from the date on which CFIUS re-  
17          ceives the new submission. The investigation shall  
18          include a review of the rationale for the withdrawal  
19          and resubmission of the proposed transaction to  
20          CFIUS.

21          “(4) COMPLETION OF INVESTIGATIONS RE-  
22          QUIRED.—An investigation of a merger, acquisition,  
23          or takeover under this subsection shall be completed,  
24          even if the notification or filing of the pending merg-  
25          er, acquisition, or takeover is withdrawn or re-

1       scinded, and CFIUS shall continue to monitor such  
2       withdrawn or rescinded transaction, except that no  
3       completed investigation or continued monitoring  
4       shall be required for any pending merger, acquisi-  
5       tion, or takeover that is terminated by agreement of  
6       the parties to the transaction.

7               “(5) MANDATORY NOTIFICATION RELATED TO  
8       CERTAIN TRANSACTIONS AFFECTING NATIONAL SE-  
9       CURITY.—

10              “(A) CHAIRPERSON AND VICE CHAIR-  
11       PERSON.—The chairperson and vice chairperson  
12       of CFIUS shall jointly agree to issue rules that  
13       require each person controlled by or acting on  
14       behalf of a foreign government to notify the  
15       chairperson of CFIUS in writing of any pro-  
16       posed merger, acquisition, or takeover by such  
17       person of United States critical infrastructure  
18       relating to United States national security.

19              “(B) REGULATIONS.—The Secretary of the  
20       Treasury shall promulgate regulations for the  
21       implementation of this paragraph, including the  
22       imposition of appropriate penalties for failure to  
23       comply with this paragraph.

24              “(c) COMMITTEE ON FOREIGN INVESTMENT IN THE  
25       UNITED STATES.—

1           “(1) ESTABLISHMENT.—There is established  
2           the Committee on Foreign Investment in the United  
3           States, which shall serve as the President’s designee  
4           for all purposes under this section.

5           “(2) CHAIRPERSON.—The Secretary of the  
6           Treasury shall serve as the chairperson of CFIUS.

7           “(3) VICE CHAIRPERSON.—The Secretary of  
8           Defense shall serve as the vice chairperson of  
9           CFIUS.

10          “(4) MEMBERSHIP.—The members of CFIUS  
11          shall include—

12               “(A) the Secretary of the Treasury;

13               “(B) the Secretary of State;

14               “(C) the Secretary of Defense;

15               “(D) the Secretary of Commerce;

16               “(E) the Secretary of Homeland Security;

17               “(F) the Attorney General of the United  
18          States;

19               “(G) the Director of the Office of Manage-  
20          ment and Budget;

21               “(H) the Director of National Intelligence;  
22          and

23               “(I) the heads of those other executive de-  
24          partments or agencies as the President deter-  
25          mines appropriate, on a case-by-case basis.

1           “(5) REFERRAL TO APPROPRIATE MEMBERS OF  
2           CFIUS.—Upon receipt of notification of a proposed  
3           or pending merger, acquisition, or takeover under  
4           this section, the chairperson of CFIUS shall assign  
5           the appropriate member of CFIUS to lead the re-  
6           view and investigation of such proposed or pending  
7           transaction under this section.

8           “(6) INTELLIGENCE REVIEWS.—The Director  
9           of National Intelligence shall—

10           “(A) direct the intelligence community, to  
11           collect and analyze information related to any  
12           proposed or pending merger, acquisition, or  
13           takeover pursuant to this section, and to pre-  
14           pare a report of its findings, which the Director  
15           shall make available to members of CFIUS not  
16           later than 15 days after the date of the com-  
17           mencement by CFIUS of a 30-day (or longer)  
18           review of any such transaction under subsection  
19           (a), and before the commencement of any inves-  
20           tigation under subsection (b); and

21           “(B) ensure that the intelligence commu-  
22           nity remains engaged in the collection, analysis,  
23           and dissemination to CFIUS of any additional  
24           relevant information that may become available  
25           during the course of any investigation con-



1           ducted under subsection (b) with respect to a  
2           transaction.

3           “(7) ASSESSMENTS AND CLASSIFICATIONS OF  
4           FOREIGN COUNTRIES FOR USE IN REVIEWS AND IN-  
5           VESTIGATIONS.—

6                   “(A) IN GENERAL.—Not later than 120  
7           days after the date of enactment of the Foreign  
8           Investment and National Security Act of 2006,  
9           the chairperson and vice chairperson of CFIUS,  
10          in consultation with the Secretary of State, the  
11          Secretary of Commerce, the Secretary of En-  
12          ergy, the Chairman of the Nuclear Regulatory  
13          Commission, and the Director of National Intel-  
14          ligence, shall develop and implement a system  
15          for assessing and classifying individual coun-  
16          tries, including—

17                   “(i) an assessment of the adherence of  
18          the country to nonproliferation control re-  
19          gimes, including treaties and multilateral  
20          supply guidelines, which shall draw on, but  
21          not be limited to, the annual report on Ad-  
22          herence to and Compliance with Arms  
23          Control, Nonproliferation and Disar-  
24          mament Agreements and Commitments re-

quired by section 403 of the Arms Control  
and Disarmament Act;

“(ii) an assessment of the relationship  
of such country with the United States,  
specifically on its record on cooperating in  
counter-terrorism efforts, which shall draw  
on, but not be limited to, the report of the  
President to Congress under section 7120  
of the Intelligence Reform and Terrorism  
Prevention Act of 2004; and

“(iii) an assessment of the potential  
for transshipment or diversion of tech-  
nologies with military applications, includ-  
ing an analysis of national export control  
laws and regulations.

“(B) CONFIDENTIALITY.—The assessment  
and classification system required by subpara-  
graph (A) and any information or documentary  
material maintained or developed thereunder—

“(i) shall be used solely by those  
agencies involved in reviewing and inves-  
tigating acquisitions, mergers, and take-  
overs pursuant to this section;

“(ii) may not be made available to the  
public; and

1 “(iii) shall be exempt from disclosure  
2 under section 552 of title 5, United States  
3 Code.

4 “(8) STAFF OF CFIUS.—Employees of the De-  
5 partment of the Treasury who serve as staff for  
6 CFIUS shall report directly to the Deputy Secretary  
7 of the Treasury, and shall perform no official func-  
8 tions other than as CFIUS staff.

9 “(d) ACTION BY THE PRESIDENT.—

10 “(1) IN GENERAL.—Subject to subsection (e),  
11 the President may take such action for such time as  
12 the President considers appropriate to suspend or  
13 prohibit any merger, acquisition, or takeover de-  
14 scribed in subsection (a)(1) which would result in  
15 control of any critical infrastructure or person en-  
16 gaged in interstate commerce in the United States,  
17 proposed or pending on or after the date of enact-  
18 ment of this section, by or with a foreign person or  
19 government, so that such control will not threaten to  
20 impair the national security.

21 “(2) ANNOUNCEMENT BY THE PRESIDENT.—

22 The President shall announce the decision on wheth-  
23 er or not to take action pursuant to this subsection  
24 not later than 15 days after an investigation de-  
25 scribed in subsection (b) is completed.

1           “(3) ENFORCEMENT.—The President may di-  
2       rect the Attorney General to seek appropriate relief,  
3       including divestment relief, in the district courts of  
4       the United States in order to implement and enforce  
5       this subsection.

6           “(e) FINDINGS OF THE PRESIDENT.—The President  
7       may exercise the authority conferred by subsection (d)  
8       only if the President finds that—

9           “(1) there is credible evidence that leads the  
10      President to believe that the foreign interest exer-  
11      cising control might take action that threatens to  
12      impair the national security; and

13          “(2) provisions of law, other than this section  
14      and the International Emergency Economic Powers  
15      Act, do not, in the judgment of the President, pro-  
16      vide adequate and appropriate authority for the  
17      President to protect the national security in the  
18      matter before the President.

19          “(f) ACTIONS AND FINDINGS NONREVIEWABLE.—  
20      The actions of the President under subsection (d) and the  
21      findings of the President under subsection (e) shall not  
22      be subject to judicial review.

23          “(g) FACTORS TO BE CONSIDERED.—For purposes  
24      of determining whether to take action under subsection  
25      (d) and for purposes of reviews and investigations under

1 this section, the President and CFIUS, respectively, shall  
2 consider, among other factors—

3 “(1) potential effects on United States critical  
4 infrastructure, including major energy assets;

5 “(2) potential effects on United States critical  
6 technologies;

7 “(3) domestic production needed for projected  
8 national defense requirements;

9 “(4) the capability and capacity of domestic in-  
10 dustries to meet national defense requirements, in-  
11 cluding the availability of human resources, prod-  
12 ucts, technology, materials, and other supplies and  
13 services;

14 “(5) the control of domestic industries and  
15 commercial activity by foreign citizens as it affects  
16 the capability and capacity of the United States to  
17 meet the requirements of national security;

18 “(6) the potential effects of the proposed or  
19 pending transaction on sales of military goods,  
20 equipment, or technology to any country—

21 “(A) identified by the Secretary of State—

22 “(i) under section 6(j) of the Export  
23 Administration Act of 1979, as a country  
24 that supports terrorism;

1 “(ii) under section 6(l) of the Export  
2 Administration Act of 1979, as a country  
3 of concern regarding missile proliferation;  
4 or

5 “(iii) under section 6(m) of the Ex-  
6 port Administration Act of 1979, as a  
7 country of concern regarding the prolifera-  
8 tion of chemical and biological weapons;

9 “(B) identified by the Secretary of Defense  
10 as posing a potential regional military threat to  
11 the interests of the United States; or

12 “(C) listed under section 309(c) of the Nu-  
13 clear Non-Proliferation Act of 1978, on the  
14 ‘Nuclear Non-Proliferation-Special Country  
15 List’ (15 C.F.R. Part 778, Supplement No. 4)  
16 or any successor list;

17 “(7) the potential effects of the proposed or  
18 pending transaction on United States international  
19 technological leadership in areas affecting United  
20 States national security;

21 “(8) the long term projection of United States  
22 requirements for sources of energy and other critical  
23 resources and materials; and

1           “(9) the ranking developed under subsection  
2           (c)(7) of the country in which the foreign persons  
3           acquiring United States entities are based.

4           “(h) CONFIDENTIALITY OF INFORMATION.—

5           “(1) IN GENERAL.—Any information or docu-  
6           mentary material filed with CFIUS pursuant to this  
7           section shall be exempt from disclosure under section  
8           552 of title 5, United States Code, and no such in-  
9           formation or documentary material may be made  
10          public, except as may be relevant to any administra-  
11          tive or judicial action or proceeding.

12          “(2) NOTIFICATION TO GOVERNOR.—Notwith-  
13          standing paragraph (1), CFIUS shall notify the  
14          Governor of any State regarding a merger, acquisi-  
15          tion, or takeover involving critical infrastructure in  
16          that State for the purpose of discussing any security  
17          concerns that arise or may arise from that trans-  
18          action. Information or documentary material made  
19          available to a Governor under this paragraph may  
20          not be made public, including under any law of a  
21          State pertaining to freedom of information or other-  
22          wise, but the exception in paragraph (3) for disclo-  
23          sures to either House of Congress or Congressional  
24          Committees shall not apply to Governors who receive  
25          information under this paragraph.

1           “(3) DISCLOSURE.—Nothing in this subsection  
2       shall be construed to prevent disclosure to either  
3       House of Congress or to any duly authorized com-  
4       mittee or subcommittee of Congress.

5       “(i) ADDITIONAL ASSURANCES.—

6           “(1) IN GENERAL.—This subsection shall gov-  
7       ern the provision of any assurances to one or more  
8       agencies of the United States in connection with the  
9       review or investigation of, or any Presidential deci-  
10      sion concerning, any merger, acquisition, or takeover  
11      under this section.

12          “(2) CONDITION TO DETERMINATION.—Any  
13      such assurances shall be deemed to be a continuing  
14      covenant of the persons on whose behalf such review  
15      is sought (and of all persons controlling such per-  
16      son), the observance of which shall be a condition of  
17      the determination of CFIUS, the President, or both,  
18      on whether to take any action with respect to such  
19      transaction.

20          “(3) CONTRACT WITH THE UNITED STATES.—  
21      Such assurances shall be embodied in an agreement  
22      executed by the foreign person or foreign govern-  
23      ment on whose behalf a review of a merger, acquisi-  
24      tion, or takeover is sought under this section and the



1 chairperson or vice chairperson of CFIUS, on behalf  
2 of the United States.

3 “(4) MONITORING OF AGREEMENT.—Compli-  
4 ance with assurances provided under this subsection  
5 shall be monitored, and may be investigated, in the  
6 same manner as a violation of a civil statute, by the  
7 agency designated by the chairperson of CFIUS, in  
8 consultation with the vice chairperson and the Attor-  
9 ney General of the United States.

10 “(5) GRANT OF JURISDICTION; REMEDIES.—  
11 The United States District Court for the District of  
12 Columbia shall have jurisdiction to enforce an agree-  
13 ment referred to in this subsection upon application  
14 by the Attorney General. Available remedies shall in-  
15 clude divestiture, injunctive relief, enforcing the  
16 terms of such agreement, and monetary damages, as  
17 appropriate.

18 “(j) NOTICE AND REPORTS TO CONGRESS.—

19 “(1) NOTICE REGARDING REVIEWS.—

20 “(A) NOTICE AT INITIATION OF REVIEW.—

21 CFIUS shall transmit written notice of a pro-  
22 posed or pending merger, acquisition, or take-  
23 over subject to this section to the members of  
24 Congress specified in paragraph (3)(C), not  
25 later than 10 days after the date of receipt of

1 a notice of such proposed or pending trans-  
2 action, including the identities of all parties in-  
3 volved and any foreign government ownership  
4 or control of any such party.

5 “(B) CERTIFICATION AT COMPLETION OF  
6 REVIEW.—Upon completion of a review under  
7 subsection (a), the chairperson and vice chair-  
8 person of CFIUS and the head of the lead  
9 agency assigned under subsection (c)(5), shall  
10 transmit a certified notice to the members of  
11 Congress specified in paragraph (3)(C).

12 “(2) NOTICE REGARDING INVESTIGATIONS.—

13 “(A) NOTICE AT INITIATION OF INVES-  
14 TIGATIONS.—Upon commencement of an inves-  
15 tigation under subsection (b), CFIUS shall no-  
16 tify in writing the members of Congress speci-  
17 fied in paragraph (3)(C).

18 “(B) CERTIFICATION AT COMPLETION OF  
19 INVESTIGATIONS.—As soon as practicable after  
20 completion of an investigation under subsection  
21 (b), the chairperson and vice chairperson of  
22 CFIUS and the head of the lead agency as-  
23 signed under subsection (c)(5), shall transmit  
24 to the members of Congress specified in para-  
25 graph (3)(C) a certified written report (con-

1           sistent with the requirements of subsection (h))  
2           on the results of the investigation, unless the  
3           matter under investigation has been sent to the  
4           President for decision.

5           “(3) CERTIFICATIONS.—

6                   “(A) IN GENERAL.—Each certified notice  
7           and report required by this subsection shall be  
8           submitted to the members of Congress specified  
9           in subparagraph (C), and shall include—

10                   “(i) information on whether or not an  
11           investigation occurred under subsection (b)  
12           and has been completed;

13                   “(ii) a description of the actions taken  
14           by CFIUS with respect to the transaction,  
15           including the details of any legally binding  
16           assurances provided by the foreign entity  
17           that were negotiated as a condition for ap-  
18           proval; and

19                   “(iii) identification of the determina-  
20           tive factors considered under subsection  
21           (g).

22           “(B) CONTENT OF CERTIFICATION.—Each  
23           notice required to be certified by this subsection  
24           shall be signed by the chairperson and vice  
25           chairperson of CFIUS and the head of the lead

1           agency assigned under subsection (c)(5), and  
2           shall contain a specific attestation of each such  
3           person that, in the determination of CFIUS,  
4           the merger, acquisition, or takeover that is the  
5           subject of the notice does not impair the na-  
6           tional security.

7           “(C) MEMBERS OF CONGRESS.—The no-  
8           tices and reports required by this subsection  
9           shall be transmitted to—

10           “(i) the Majority Leader and the Mi-  
11           nority Leader of the Senate;

12           “(ii) the chair and ranking member of  
13           the Committee on Banking, Housing, and  
14           Urban Affairs of the Senate and of any  
15           committee of the Senate having oversight  
16           over the agency assigned to lead a review  
17           or investigation under subsection (c)(5);

18           “(iii) the Speaker and the Minority  
19           Leader of the House of Representatives;  
20           and

21           “(iv) the chair and ranking member of  
22           the Committee on Financial Services of the  
23           House of Representatives and of any com-  
24           mittee of the House of Representatives  
25           having oversight over the agency assigned

1 to lead a review or investigation under sub-  
2 section (c)(5).

3 “(D) TRANSMITTAL TO OTHER MEMBERS  
4 OF CONGRESS.—The Majority Leader or the  
5 Minority Leader, in the case of the Senate, and  
6 the Speaker or the Minority Leader, in the case  
7 of the House of Representatives, may provide  
8 the notices and reports required by this para-  
9 graph regarding a proposed or pending merger,  
10 acquisition, or takeover involving critical infra-  
11 structure—

12 “(i) in the case of the Senate, to  
13 members of the Senate from the State in  
14 which such critical infrastructure is lo-  
15 cated; and

16 “(ii) in the case of the House of Rep-  
17 resentatives, to a member from a Congres-  
18 sional District in which such critical infra-  
19 structure is located.

20 “(E) LIMITATION ON DELEGATION OF  
21 CERTIFICATIONS.—Notices and reports required  
22 to be certified under this subsection shall be  
23 signed by the chairperson and vice chairperson  
24 of CFIUS, and such certification requirement  
25 may not be delegated.

1 “(4) ANNUAL REPORTS.—

2 “(A) REPORT REQUIRED.—The Secretary  
3 of the Treasury, on behalf of and after con-  
4 sultation with the members of CFIUS, shall  
5 submit to the Committee on Banking, Housing,  
6 and Urban Affairs of the Senate and the Com-  
7 mittee on Financial Services of the House of  
8 Representatives, on or before March 15 of each  
9 year, a written report on the policy of the  
10 United States with respect to the preservation  
11 of the Nation’s defense production and critical  
12 infrastructure. The Secretary shall appear be-  
13 fore both committees to provide testimony on  
14 such reports.

15 “(B) CONTENTS OF REPORT.—Each report  
16 submitted under subparagraph (A) shall con-  
17 tain—

18 “(i) an analysis of any merger, acqui-  
19 sition, or takeover by a foreign person or  
20 foreign government affecting national secu-  
21 rity that has occurred during the preceding  
22 year to which the report relates, including  
23 the nature of the acquisitions and the ef-  
24 fect or potential impact of such acquisi-

1                   tions on the United States defense indus-  
2                   trial base and critical infrastructure;

3                   “(ii) a similar updated analysis for  
4                   any merger, acquisition, or takeover that  
5                   occurred during the 4 years immediately  
6                   preceding the year dealt with in the report  
7                   in clause (i), including a separate section  
8                   discussing the impact of mergers, acquisi-  
9                   tions, and takeovers by foreign govern-  
10                  ments or persons acting on behalf of or in  
11                  concert with foreign governments;

12                  “(iii) a detailed discussion of all per-  
13                  ceived risks to national security or United  
14                  States critical infrastructure that CFIUS  
15                  will take into account in its deliberations  
16                  during the year in which the report is de-  
17                  livered to the committees;

18                  “(iv) a table showing on a cumulative  
19                  basis, by sector, product, and country of  
20                  foreign ownership, the number of acquisi-  
21                  tions reviewed, investigated, or both, by  
22                  CFIUS, to provide a census of production  
23                  potentially relevant to the Nation’s defense  
24                  industrial base owned or controlled by for-  
25                  eign persons or foreign governments;

1 “(v) a summary of any cases before  
2 CFIUS, during the year to which the re-  
3 port relates, in which there were disagree-  
4 ments among the members of CFIUS;

5 “(vi) an evaluation of whether there is  
6 credible evidence of a coordinated strategy  
7 by 1 or more countries or companies to ac-  
8 quire critical infrastructure of or within  
9 the United States or United States compa-  
10 nies involved in research, development, or  
11 production of critical technologies for  
12 which the United States is a leading pro-  
13 ducer;

14 “(vii) an evaluation of whether there  
15 are industrial espionage activities directed  
16 or directly assisted by foreign governments  
17 against private United States companies  
18 aimed at obtaining commercial secrets re-  
19 lated to critical technologies or critical in-  
20 frastructure; and

21 “(viii) such other matters as are nec-  
22 essary to give a complete disclosure and  
23 analysis of the work of CFIUS during the  
24 year to which the report relates.



1           “(C) CLASSIFIED REPORTS.—The evalua-  
2           tions required by clauses (v) and (vi) of sub-  
3           paragraph (B) may be classified. If they are  
4           submitted in classified form, an unclassified  
5           version of such evaluations shall be made avail-  
6           able to the public.

7           “(D) OTHER INFORMATION WITHHELD  
8           FROM PUBLIC REPORTS.—

9           “(i) PROPRIETARY INFORMATION.—  
10           The chairperson of CFIUS, in consultation  
11           with the vice chairperson of CFIUS, may  
12           withhold from public release other such in-  
13           formation as the chairperson determines is  
14           proprietary information.

15           “(ii) RULE OF CONSTRUCTION.—  
16           Nothing in this subparagraph shall pro-  
17           hibit such information from being provided  
18           to relevant Committees of Congress.

19           “(5) APPEARANCES BEFORE CONGRESS.—The  
20           chairperson and vice chairperson of CFIUS, and the  
21           heads of such additional CFIUS member agencies  
22           specified in a written request by the Chairman of  
23           the Committee on Banking, Housing, and Urban Af-  
24           fairs of the Senate shall annually appear before the  
25           Committee on Banking, Housing, and Urban Affairs

1 and the Committee on Financial Services of the  
2 House of Representatives to provide testimony on  
3 the activities of CFIUS.

4 “(k) REGULATIONS.—

5 “(1) IN GENERAL.—The Secretary shall issue  
6 regulations to carry out this section. Such regula-  
7 tions shall, to the extent possible, minimize paper-  
8 work burdens and shall, to the extent possible, co-  
9 ordinate reporting requirements under this section  
10 with reporting requirements under any other provi-  
11 sion of Federal law.

12 “(2) REGULATIONS RELATING TO DEFINI-  
13 TIONS.—Not later than 30 days after the date of en-  
14 actment of the Foreign Investment and National Se-  
15 curity Act of 2006, the Secretary of the Treasury  
16 and the Secretary of Defense shall jointly agree to  
17 and issue rules concerning the manner in which the  
18 definition of the term ‘critical infrastructure’ in sub-  
19 section (m)(2) shall be applied to particular acquisi-  
20 tions, mergers, and takeovers, for purposes of the  
21 mandatory investigation requirement of subsection  
22 (b)(1)(A), except that, until such rules are issued in  
23 final form and become effective, such definition shall  
24 be applied without regard to any such rules (whether  
25 proposed or otherwise).

1       “(l) EFFECT ON OTHER LAW.—Nothing in this sec-  
2 tion shall be construed to alter or affect any existing  
3 power, process, regulation, investigation, enforcement  
4 measure, or review provided by any other provision of law,  
5 including the International Emergency Economic Powers  
6 Act, or of the President or Congress.

7       “(m) DEFINITIONS.—As used in this section—

8           “(1) the term ‘critical infrastructure’ means,  
9 subject to rules issued under subsection (k)(2), any  
10 systems and assets, whether physical or cyber-based,  
11 so vital to the United States that the degradation or  
12 destruction of such systems or assets would have a  
13 debilitating impact on national security, including  
14 national economic security and national public  
15 health or safety;

16           “(2) the term ‘critical technologies’ means tech-  
17 nologies identified under title VI of the National  
18 Science and Technology Policy, Organization, and  
19 Priorities Act of 1976, or other critical technology,  
20 critical components, or critical technology items es-  
21 sential to national defense identified pursuant to this  
22 section;

23           “(3) the terms ‘Committee on Foreign Invest-  
24 ment in the United States’ and ‘CFIUS’ mean the  
25 committee established under subsection (c);

1           “(4) the term ‘foreign government’ means any  
2           government or body exercising governmental func-  
3           tions, other than the Government of the United  
4           States or of a State or political subdivision thereof.  
5           The term includes national, State, provincial, and  
6           municipal governments, including their respective  
7           departments, agencies, government-owned enter-  
8           prises, and other agencies and instrumentalities;

9           “(5) the term ‘foreign person’ means any non-  
10          United States national, any organization owned or  
11          controlled by such a person, and any entity orga-  
12          nized under the laws of a country other than the  
13          United States, and any entity owned or controlled by  
14          such entity; and

15          “(6) the term ‘intelligence community’ has the  
16          same meaning as in section 3 of the National Secu-  
17          rity Act of 1947 (50 U.S.C. 401a).”.